IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15774 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)
Versus
YUSUF A PARASARA - Respondent(s)

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Appearance :
MR ASHISH M DAGLI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
MS HINA DESAI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 23/01/2006

ORAL JUDGMENT

1. List had been revised thrice. Learned Advocate, Mr.Ashish M. Dagli on all the three round, not remained present. Nobody mentioned this matter on his behalf. No leave note or sick note is filed by him. Learned Advocate, Ms.Hina Desai remained present on behalf of respondents. In absence of request of Mr.Dagli and considering the fact that matter is of 2003 earlier adjourned on 10th January, 2006 so knowing fully well Mr.Dagli has not remained present. Therefore, in absence of Mr.Dagli, this Court has no option but to proceed with the matter on merits, because to dismiss the matter in default has no purpose except to give an opportunity to the petitioner to file restoration and again to appear in the matter which amounts to further delaying the hearing of petition. Therefore, I am not passing any order dismissing the petition in default, instead of that I am deciding the matter on merits in absence of Mr.Dagli.

2. In the present petition, petitioner has

challenged award passed by Labour Court, Jamnagar in Reference No.41 of 2003 dated 16th June, 2003 wherein labour Court, Jamnagar has set aside the termination order and granted reinstatement with continuity of service without backwages of interim period and imposed the punishment of stoppage of five increments with cumulative effect. Against this petition, affidavit-in-reply is filed by respondent.

3. Learned Advocate Ms.Hina Desai appearing on behalf of respondent submitted that respondent is at present working in the corporation. He has been reinstated in pursuance to the order passed by this Court on 29th April, 2004. Ms.Hina Desai submitted that respondent was working as a Clerk in the corporation. Initially he was working in Rajkot Division at Khambhalia Depot. At the relevant time allegations made against the respondent that on 19th August, 1996 and 24th August, 1996, the Conductor those who have approached him alongwith CWA to deposit the cash amount including the handicap coupon wherein some eraser had been made by him and

thereby he misappropriated amount of Rs.743/-. On the basis of aforesaid charges, the charge-sheet was served to respondent. Thereafter, departmental inquiry was initiated against him and Senior Divisional Traffic Officer in Default Case No.387 has ultimately come to the conclusion to impose a punishment of stoppage of three annual increments with permanent effect. This order has been sent to Khambhalia Depot for communicating to the respondent workman. Meanwhile, Jamnagar Division came into existence pursuant to bifurcation from Rajkot Division. Ultimately, the case papers were handed over to Divisional Traffic Officer, Jamnagar Division. After receiving the papers, the Divisional Traffic Officer has not agreed with the finding given by the Senior Divisional Traffic Officer, Rajkot, therefore issued show cause notice to the workman as to why he should not be dismissed from service. The reply was given by workman and ultimately respondent workman was dismissed from service on 22nd June, 2000. Against that, Industrial Dispute was raised and reference was pending before Labour Court. Meanwhile his appeal was pending

before the authority which was not entertained by appellate authority due to pendency of reference before the Labour Court. Therefore, respondent workman requested the labour court to permit him to withdraw the reference with a permission to file independent reference if appeal is rejected by the appellate authority. That permission was granted by Labour Court and ultimately appeal of respondent was rejected by appellate authority. Therefore, he raised another dispute against the dismissal order dated 22nd June, 2000 being Reference No.41 of 2003. Ms.Hina Desai also submitted that in past service of seven years of the workman, there was only one default against the workman, for which three months' increment was stopped. Except that there is no default committed by workman in past. She submitted that labour court has considered entire aspects of the matter on merits and also kept in mind that on being asked by the Depot Manager, Khambhalia, immediately on a next date respondent workman had deposited Rs.743/- with the corporation. She has also submitted that why the Divisional Traffic Officer, Jamnagar had not agreed

with Senior Divisional Traffic Officer, Rajkot for that, no findings have been given to the workman before passing the dismissal order alongwith show cause notice which was issued by Divisional Traffic Officer, Jamnagar. Therefore, according to her submission, it amounts to violation of principle of natural justice. She submitted that labour court has rightly exercised power under Section 11-A of the Industrial Dispute Act and modified the punishment looking to the nature of misconduct and explanation given by workman and also not granted any amount of backwages. Not only that, but harsh punishment is also imposed of stoppage of five increments with permanent effect. Therefore, labour court has rightly applied its mind and no error has been committed. Therefore, she requested to dismiss the petition.

4. Ms.Hina Desai has further submitted that the workman was actually working as Clerk and during that period the additional work was entrusted to him and at that time the said mistake had been occurred and, therefore also it was not his routine

work, for which the workman was punished by the petitioner authority.

5. I have considered the submission made by learned advocate Ms. Hina Desai. I have perused the award passed by the Labour Court, Jamngar. I have also considered merits of the matter and looking to the observations made by the labour court for amount of Rs.743/- which was not misappropriated by the workman, but it was a bona-fide mistake on his part which was immediately on next day deposited with the corporation.

6. Labour Court has considered past record of the workman and when he was serving as Clerk during seven years of service, the Senior Divisional Traffic Officer, Rajkot decided to impose punishment of stoppage of three increments and due to bifurcation from Rajkot Division, new Jamnagar Division, came into existence and papers were sent to Jamnagar Division for further action in which Divisional Traffic Officer, Jamnagar has given contrary conclusion and, therefore, he issued show

cause notice to the workman but, alongwith show cause notice no finding given as to why he disagreed with the finding of the Senior Divisional Traffic Officer, Rajkot, as such no finding has been attached and no opportunity has been given except the opinion of Divisional Traffic Officer, Jamnagar to dismiss the workman for the said misconduct. Therefore, this clearly amounts to violation of principle of natural justice and Labour Court has rightly exercised the power under Section 11-A of the Industrial Disputes Act. The order of dismissal prima-facie unjust and therefore, the Labour Court having the jurisdiction and this being a fit case in which Labour Court has rightly exercised powers when there is a bona-fide mistake on the part of the workman of not depositing amount of Rs.743/- immediately, which, in fact, was on next date deposited by the workman and in past there is only one default which was not serious one.

7. It is a settled law laid by the Court that if one authority who has conducted inquiry and

submitted report and if other authority disagreeing with that report then other authority must have to give reason of disagreement with earlier finding.

In such circumstances, the subsequent authority who is not agreed with earlier authority, must have to supply the copy of his finding of disagreement to the concerned employee and then to ask why he should not have been punished by issuing show cause notice.

This procedure is not followed in this case by petitioner. The Senior Division Traffic Officer, Rajkot who has held the inquiry against respondent and given finding and imposed punishment of stoppage of three increments with cumulative effect. The Divisional Traffic Officer, Jamnagar, was not agreed with such finding. Therefore, he straightway issued show cause notice without attaching finding that why he was not agreed and not supplied the copy to the concerned employee. This is violation of basic principle of natural justice.

The view taken by this Court in case of Ahmedabad Municipal Transport Service Vs.

Amirullah Salim Ansari reported in 2004 (6) Gujarat High Court Judgments 713 wherein following observation has also been made.

> " The law on the point is settled in as much as it is open to the disciplinary authority to disagree with the finding or the opinion of the I.O. However, at the same timer the requirement is that the disciplinary authority before issuance of show cause notice has to record the reasons for disagreement and the opportunity is required to be given to the workman concerned and thereafter it is open to the disciplinary authority to impose the punishment. If such process or procedure is not followed, the order for imposition of penalty would be vulnerable. In the present case, as observed earlier, in the notice issued to the workman concerned by the disciplinary authority no reasons for disagreement are recorded and on the contrary by referring the inquiry proceedings it has been mentioned that the charges are proved. Therefore, in my view, the order for imposition of punishment on the basis of I.O's report without recording reasons for disagreement shall not stand in the eye of law. The aforesaid view deserves to be taken because employer is a "State" within the meaning of Article 12 of the Constitution of India."

8. Recently this aspect also examined by Division Bench of Delhi High Court in case of Arun Kumar Singh Vs. Director General and Ors. reported in 2005 (1) LLJ 793. The relevant observations made by Division Bench of Delhi High Court in Paras:- 5 and 6, are as under:-

> " We have considered the aforesaid submissions of the counsel for parties. In our considered opinion the ratio of the decision of the Supreme Court in E.Karunakar's case (supra) cannot be said to be directly applicable as that decision relates to the first stage of the inquiry whereas we are concerned in the present case with the second stage of the inquiry i.e. with regard to the disagreement of the disciplinary authority with the findings of the inquiry officer. The ratio of the decision in Kunj Behari's case (supra) is squarely, and fully applicable to the facts and circumstances of the present case inasmuch as in the present case also the inquiry officer has recorded his findings in the inquiry report in favour of the petitoiner holding the petitioner to be not guilty of the charges levelled against him. The disciplinary authority, however, seeks to disagree with the aforesaid findings recorded by the inquiry officer and has held that the petitioner is

guilty of the charges. Therefore, before recording his findings and reasons, it was incumbent upon the disciplinary authority to record the tentative reasons for disagreement with the findings of the inquiry officer. The same were also required to be communicated to the delinquent officer, namely, to the petitioner, in order to give opportunity to him to support the inquiry report and only thereafter to proceed in the matter in accordance with law after reply is received from the petitioner.”

In the present case, the disciplinary authority has failed to comply with the aforesaid procedure, which is mandatory as laid down in the decision of Kunj Behari's case (supra) and, therefore, the impugned order, which is passed by the disciplinary authority in violation of the settled law, is required to be set aside, which we hereby do. The disciplinary authority shall, however, be free to proceed in the matter in accordance with law and according to the procedure laid down in Kunj Behari's case. It shall also be open to the disciplinary authority to pass such further or other orders in the departmental proceedings as it deems fit and proper which shall be passed following the ratio of the decision of Kunj Behari's case. Accordingly, the orders passed by the

disciplinary authority, appellate authority as also by the revisional authority are set aside giving liberty to the respondent to proceed in the matter in accordance with law. It shall be open to the disciplinary authority to continue with the inquiry proceeding in accordance with law. If it decides to proceed in the matter, then the same shall be proceeded with only after complying with the requirements as laid down in the decision in Kunj Behari's case (supra).”

9. learned Advocate Mr.A.M.Dagli is not present for pointing out any infirmity in the award. Even though, I perused the entire award and as per my opinion it is just balancing award passed by the labour court denying the total back wages of about 3 years period imposing the harsh punishment of stoppage five increments with permanent effect which met the end of justice. Therefore, when there is no infirmity in the award which requires any interference by this Court while exercising powers under Article 227 of the Constitution of India. Hence, there is no substance in the present petition. Present petition is dismissed. Rule is discharge. Interim relief, if any, granted earlier

stands vacated. No order as to costs.

(H.K.RATHOD, J.)

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